

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS – AUSTIN DIVISION

BRUCE LADDEN,

§

Plaintiff,

§

Case No.: 1:24-cv-1060

§

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§

§

v.

§

§

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§

AUSTIN WEST THIRD REAL ESTATE
HOLDING, INC.,

§

Defendant

§

NOTICE OF REMOVAL

Defendant, Austin West Third Real Estate Holding, Inc., pursuant to 28 USC §§1441(b), 1446, and 1332(a)(1), hereby removes this action from the 200th District Court of Travis County, Texas, to this Court, and as grounds for this removal states as follows:

Introduction

1. On or about August 15, 2024, Plaintiff Bruce Ladden (Plaintiff) filed a civil action against Defendant seeking damages for injuries he allegedly sustained on July 27, 2023, when he tripped and fell into an elevator in a building owned by Defendant in Austin, Travis County, Texas. Plaintiff's Petition was filed in the 200th District Court of Travis County, Texas under Cause No. D-1-GN-24-005125. The District Clerk's file, including the Plaintiff's Original Petition is attached hereto and incorporated herein as Exhibit A.

2. Defendant was served with the citation and Plaintiff's Original Petition on August 16, 2024. See a copy of the affidavit of service attached hereto and incorporated herein as Exhibit B.

3. As required by 28 U.S.C. §1446(a), Exhibit A is a true and complete copy of all process, pleadings, and orders in the state court action.

4. This Notice of Removal is timely under 28 U.S.C. §1446(b)(1), as it is being filed within 30 days after service upon Defendant.

5. Removal of this case is proper as this Court has diversity subject matter jurisdiction pursuant to 28 USC §1332(a)(1) because the parties are citizens of different states, and the amount in controversy exceeds \$75,000.00 exclusive of interest and costs.

6. Venue is proper pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the alleged events or omissions giving rise to the claim occurred in Travis County, Texas, which is within the Judicial Circuit of the United States District Court for the Western District of Texas.

7. Pursuant to 28 U.S.C. §1446(d), Defendant will promptly file a written Notice of Removal to Federal Court with the Clerk of the State Court, along with a copy of this Notice of Removal.

8. Also pursuant to 28 U.S.C. §1446(d), Defendant will promptly serve this Notice of Removal, along with the Notice of Removal to Federal Court filed with the State Court, upon Plaintiffs.

Diversity of Citizenship

9. For diversity purposes a corporation is “deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” *Hertz Corp. v. Friend*, 559 U.S. 77, 88 (2010).

10. Defendant Austin West Third Real Estate Holding, Inc. is a corporation organized under the laws of the state of Delaware, with its principal place of business located in New York City, New York.

11. For purposes of diversity subject matter jurisdiction, the citizenship of a natural person is the person's domicile, which is determined by the state where the person is physically present with an intent to remain indefinitely. *Yeldell v. Tutt*, 913 F.2d 533, 537 (8th Cir. 1990).

12. Plaintiff resides in Travis County, Texas. Accordingly, Plaintiff is domiciled in Travis County, Texas and is a citizen of the state of Texas.

13. For purposes of diversity subject matter jurisdiction, Plaintiff is a citizen of Texas, and Defendant Austin West Third Real Estate Holding, Inc., is a citizen of the state of New York. Therefore, complete diversity of citizenship as required by 28 U.S.C. §1332 is established because the parties are diverse.

Amount in Controversy

14. Paragraph 21 of Plaintiff's Original Petition alleges serious injuries to Plaintiff's life, health, and wellbeing caused by the accident. He further claims the injuries "continue to plague Plaintiff today." Paragraph 22 of Plaintiff's Original Petition states he seeks monetary relief over \$1,000,000. On its face, Plaintiff's petition shows the amount in controversy is well in excess of the minimum \$75,000.00, exclusive of interest and costs, required for the federal courts to exercise subject matter jurisdiction over this case. *See Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002).

Conclusion

15. Jurisdiction is proper in the United States District Court Court pursuant to 28 U.S.C. §1332(a)(1), which provides that the United States District Courts "shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between . . . citizens of different states." Plaintiff alleges more than \$75,000 in damages caused by the accident made the basis of his lawsuit, and the parties are citizens of different states.

16. Nothing in this Notice of Removal shall be interpreted as a waiver or relinquishment of Defendant's right to assert any defense or affirmative matter including, without limitation, the defenses of: (1) lack of jurisdiction over the person; (2) insufficiency of service of process; (3) the absence of venue in this Court or in the court from which this action has been removed.

WHEREFORE, Defendant Austin West Third Real Estate Holding, Inc. prays that Cause No. D-1-GN-24-005125 in the 200th District Court of Travis County, Texas, be removed to this Court for adjudication.

Respectfully submitted,

LAW OFFICE OF CONNIE SQUIERS

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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing document has been served on the individuals listed below in compliance with the Federal Rules of Civil Procedure on September 9, 2024.

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